

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Application of)	
)	
GTE Corporation,)	
Transferor,)	
)	
AND)	
)	
Bell Atlantic Corporation,)	CC Docket No. 98-184
Transferee,)	
)	
For Consent to Transfer Control of Domestic)	
and International Section 214 and 310)	
Authorizations and Applications to Transfer)	
Control of a Submarine Cable Landing License)	

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), on behalf of its local and long distance divisions, submits its Reply Comments to the comments filed in the above referenced docket in response to the Public Notice issued by the Commission as DA 01-1325. In these Reply Comments, Sprint concurs with AT&T and CompTel that there should be a clear understanding of Verizon's plans to deploy advanced service facilities, and competitors' rights to access them, before Verizon collapses its separate advanced services affiliate, known as Verizon Advanced Data, Inc. (herein, "VADI" or the "Affiliate"). Further, until VADI is collapsed into Verizon, the Commission should require Verizon to negotiate and arbitrate under the Communications Act of 1934, as amended (the "Act") on behalf of itself and VADI, so that a CLEC is not required to conduct two separate negotiations/arbitrations in order to access the ILEC network as provided under §251(c) of the Act.

The Public Notice seeks comment on Verizon's request to lift the requirement, set forth in the *BA/GTE Merger Order*, that Verizon offer advanced services through a separate

affiliate.¹ The *BA/GTE Merger Order* provides that the requirement to maintain the Affiliate would sunset nine months after a final and non-appealable judicial decision determining that the Affiliate is a successor or assign of the ILEC. On January 9, 2001, the United States Court of Appeals for the D.C. Circuit confirmed that the Commission's approval of a separate advanced services affiliate in connection with the SBC-Ameritech merger was an improper forbearance of an ILEC's requirements under §251(c) of the Act, and that such affiliate was a successor or assign of the ILEC and thus assumed the ILEC's obligations under §251(c).²

The carriers who filed comments in this docket generally agreed upon two points. First, the Ascent case effectively started the clock toward sunseting the Affiliate. Second, because Verizon will likely attempt to limit access to its advanced services network, there should be a clear understanding of Verizon's plans to deploy advanced service facilities, and competitors' rights to access these facilities, before Verizon reacquires VADI's assets.

Sprint concurs with both points made by the commenters, but would especially emphasize the second point, that is, to establish up-front expectations before granting an exception to the timelines required by the merger conditions. As AT&T properly observed, it is not sufficient "to simply accept Verizon's assurances that 'no competitor will be harmed' by termination of the separate affiliate requirement."³ AT&T suspects that Verizon will attempt to control access to next-generation networks so that only Verizon will be able to compete effectively using that architecture.⁴ Comptel's comments supplement AT&T's

¹ *Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Order, 15 FCC Rcd 14032 (2000) ("*BA/GTE Merger Order*") at App. D, Condition 11c.

² Association of Communication Enterprises v. FCC, 235 F.3d 662 (D.C. Cir. 2001).

³ AT&T Comments at 3.

⁴ AT&T Comments at 5.

suspensions by demonstrating that RBOCs are using their corporate structures to avoid §251 obligations. CompTel asserts that, in the wake of the Ascent decision, "various states are or will be considering how to remove the ILEC's separate affiliate shield..."⁵

In fact, on June 11, 2001, Verizon-Pennsylvania, Inc. and Verizon North, Inc. (collectively, "Verizon") filed an answer to a Petition for Arbitration ("Petition") filed in Pennsylvania by Sprint's CLEC. In the Petition, Sprint sought to require Verizon to unbundle its packet switching capability. Verizon declined, and among other arguments, asserted that Sprint was seeking packet switching from the wrong party, because VADI, not Verizon, owns the advanced service assets and provides advanced services to Verizon's voice customers. Verizon continued:

"This arbitration is between Verizon and Sprint. The unbundling of packet switching by VADI is beyond the scope of the agreement. There is no question that in accordance with 251(c)(4), Verizon will make available to Sprint those telecommunications services that it provides to its non-carrier customers. Sprint, however, is demanding that this interconnection agreement and arbitration address services that are offered by a *different* company.... If Sprint wishes to purchase services from VADI, it should... enter into an interconnection agreement with VADI or simply purchase out of VADI's approved tariff. However, Sprint's issues with a company other than Verizon are simply not properly decided in this arbitration."⁶

Verizon continues to hide behind the Affiliate even in light of the Ascent decision. In a footnote to its Answer, Verizon stated that it was not a party in the Ascent case, and therefore Verizon and VADI continue to operate as separate entities. Nevertheless, Verizon

⁵ CompTel Comments at 9.

⁶ *Petition of Sprint Communications Company, L.P. for an Arbitration Award of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. §252(b) And Related Arrangements with Verizon Pennsylvania Inc.*, Pennsylvania Public Utility Commission Docket No. A-310183F0002 ("Pennsylvania Arbitration"), Verizon Answer at 34 (filed June 11, 2001).

conceded that VADI has made provisions to comply with resale and unbundling obligations in recognition of the Ascent decision.⁷

In discovery requests by Sprint in the *Pennsylvania Arbitration*, Sprint sought information on Verizon and its affiliates. Verizon objected and refused to respond on behalf of its affiliates. In response to Sprint's motion to compel responses, Verizon stated that "Verizon PA is under an obligation to maintain a separation between Verizon PA and VADI and thus to the extent Sprint seeks access to VADI's assets, Sprint must deal with VADI."⁸

The necessary consequence of Verizon's position is that a CLEC must conduct two arbitrations against two entities in order to achieve the benefits of the Act in Verizon territories. Ironically, this situation takes place in Pennsylvania, a state that attempted to eliminate anti-competitive incentives by separating Verizon's wholesale and retail operations. Instead, in creating a separate affiliate for advanced services, Verizon cleverly hoodwinked the industry. In retrospect, Verizon should have been required to separate the wholesale and retail portions of advanced services by having the ILEC retain the monopoly network portion while the affiliate operated the retail marketing side. Rather, VADI ended up with the packet switching *assets*, including DSLAMs and ATM switches, forcing CLECs to negotiate and arbitrate on two fronts to obtain a complete set of services.

Contrary to the Commission's expectations, Verizon is using the separate advanced services affiliate requirement for its own benefit. A tool intended to protect CLECs in the non-discriminatory provision of

⁷ Verizon Answer at 34-35.

⁸ *Pennsylvania Arbitration*, Opposition of Verizon-Pennsylvania, Inc. and Verizon North Inc to Motion to Dismiss and Compel Responses filed by Sprint Communications Company L.P. (filed June 21, 2001) at 14.

advanced services is instead hindering them. The CLEC shield has actually become *Verizon's* shield.

The Ascent decision eviscerated the separate advanced services structure. The Court's opinion supported both arguments that (i) the creation of an advanced services affiliate not subject to the obligations of §251(c) represented an improper forbearance of ILEC obligations in violation of §160(d) of the Act,⁹ and (ii) the affiliate was a successor or assign of the ILEC and therefore subject to the ILEC's obligations. In light of this decision, the Commission should prevent Verizon from playing corporate shell games, as argued by CompTel.¹⁰

It is now only a matter of time until VADI is collapsed into Verizon. Until this occurs, the Commission should set ground rules for Verizon's plans to deploy advanced service facilities and competitors' rights to access them. The Commission should also require Verizon to negotiate and arbitrate under the Act on behalf of itself and VADI, rather than force competitors to conduct multiple arbitrations to obtain complete access to the network.

Respectfully submitted,

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⁹ 47 U.S.C. §160(d)

¹⁰ CompTel Comments at 9, footnote 31.

CERTIFICATE OF SERVICE

I, Joyce Walker, hereby certify that I have on this 28th day of June 2001, served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing “Reply Comments of Sprint Corporation” in GTE Corporation, Transferor, AND Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License, CC Docket No. 98-184, filed this date with the Secretary, Federal Communications Commission, to the persons on the service list set forth below.

_____/s//
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